THE UNITED NATION MECHANISM FOR THE ENFORCEMENT OF HUMAN RIGHTS: AN EXPLORATION

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ABSTRACT

Victims have experienced several obstacles in establishing corporate accountability for human rights breaches, which stem not only from a partially completed and inadequate domestic legal order but also from practical obstacles to the institutional and regulatory framework's implementation. As a result, creative normative methods to reform international and local legal systems on business and human rights with the goal of greater enforcement are required. As a result, their access to justice has been limited both domestically and internationally. the present study looks at methods that the UN has used to enforce Human Rights in effective ways.

Keywords: human rights abuses, access to justice, victims, UN and Human Rights treaty

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1.0 INTRODUCTION:

International human rights law obliges States to respect, implement, and enforce the treaty bodies they have ratified at a national level. Mechanisms and bodies have been established within the United Nations' System to monitor the States' overall compliance with human rights law. Human rights can and should be enforced domestically through national human rights mechanisms or court systems, when these rights are incorporated into domestic law. However, in some cases, where domestic legal proceedings fail to address human rights violations, mechanisms and procedures for individual complaints or communications are available at regional and international levels. [1]

The United Nations (UN) is an intergovernmental organisation founded in 1945 by 51 countries. It was created against the backdrop of the Second World War as a commitment by countries to enhance international peace and security, develop friendly relations between countries, and promote human rights. It is from this framework that the current human rights system emerged. There are currently 193 States that are members of the UN. The numerous UN committees provides a forum for all Member States to air their views and take action on a number of issues. Although typically known for its peace-keeping and humanitarian assistance, the work of the UN has expanded to incorporate a number of different issues, including counter-terrorism, landmines, sustainable development, gender equality, international health, refugee protection, and environment, human rights, and disaster relief. The Charter of the United Nations was signed on 26 June, 1945, and came into force on 24 October, 1945. It is the document establishing the UN and sets out purposes and principles of the UN, responsibilities of members and the functions and powers of different organs that make up the UN. Given the context of its creation, it also sets out how the UN will address threats to the peace, breaches of the peace and acts of aggression and international economic and social cooperation.[2]

The United Nations was created to:

a) Maintain international peace and security;
b) Develop friendly relations among nations, based on the principles of equal rights and self- determination of peoples;

[1] Sayed Qudrat Hashimy, Jackson Simango Magoge & Ahsnat Mokarim, *Relentless Violation of International Humanitarian Law During the Ongoing Conflict in Afghanistan*, SSRN JOURNAL (2022), https://www.ssrn.com/abstract=4011585 (last visited Jun 19, 2022).
[2] citation-357746025.ris.

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c) Achieve international cooperation in solving international problems and promoting and encouraging respect for human rights and fundamental freedoms; and be a centre for harmonising the actions of nations in the attainment of these common ends.[3]

The UN human rights monitoring mechanisms can be classified into two main categories:

UN Charter-based bodies and procedures and Treaty-based bodies and procedures. The former derive from provisions in the Charter of the United Nations (UN); the latter are bodies created under international human rights treaties. These two mechanisms complement each other. A series of international human rights treaties and other instruments adopted since 1945 have expanded the body of international human rights law. They include the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Convention on the Elimination of All Forms of Racial Discrimination (1965), the Convention on the Elimination of All Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989) and the Convention on the Rights of Persons with Disabilities (2006), among others.[4]

2.0 HUMAN RIGHTS IN THE UN CHARTER

The founders of the UN, not content to treat human rights as merely one among many shared objectives of UN member governments, implicitly articulated a theory of peace according to which respect for human rights & fundamental freedoms is a necessary condition for peace within & among nations. The Charter's preamble places "faith in fundamental human rights" immediately after its aim "to save succeeding generations from the scourge of war". Yet the Charter does not apply this theory to the relative powers of the UN's main organs. Instead, the human rights provisions are relegated, in the Chapter on the purposes of the UN, to achieving international cooperation (art.1(3)) and in the chapter on international economic & social cooperation, to promoting "universal respect for, and observance of, human rights & fundamental freedoms for all without distinction as to race, sex, language, or religion" (art.55).The UN General Assembly (UNGA) may initiate studies & make recommendations for the purposes of "assisting in the realization of human rights"(art.13(1)) and the Economic & Social Council may make recommendations & draft conventions on human rights (art.62(2)

[3] (Art 1, Charter of the United Nations 1945).
[4] Sayed Hashimy, *Dynamic Role of the United Nations Security Council to Maintain Peace and Security in Asia Especially in Afghanistan*, May 17, 2017.

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&(3)) as well as set up commissions, including to promote human rights (art.68), which it did in 1946 by establishing the UN Commission on Human Rights (replaced in 2006 by the UN Human Rights Council or HRC).[5]

3.0 PROMOTING AND PROTECTING HUMAN RIGHTS THROUGH THE UNITED NATIONS

The space for UN action in a wide range of human rights concern has been opened over that last thirty years owing to a political willingness to limit the scope of Charter Article 2(7) (domestic jurisdiction) and expand that of the Article 56 (cooperation with the UN to achieve human rights).[6] The UN does much today that would have been deemed "intervention" by most states a few decades ago, e.g. investigation ofabuse, adoption of resolutions by UNGA and Human Rights Council explicitly denouncing countries by name, sending special envoys and rapporteurs, receiving complaint from individuals, addressing urgent appeals to governments, and conducting inquiries. [7]

Indeed the range of UN action to realize its Charter mandate to promote and protect human rights covers at least three means of preventing harm (education and information, standard setting and interpretation, and institution building within Member States) and five to respond human rights situation and protect the human rights (monitoring through reporting fact finding, adjudication, political supervision, humanitarian action, and coercive action).[8]

3.1 PROMOTION AND PROTECTION THROUGH UN HUMAN RIGHTS MECHANISMS

Originally, the principal body responsible for human rights in the UN was the Commission on Human Rights. It carried out bulk of the standard- setting activity of the early years following the adoption by the UDHR. In the 1950s and early 1960s, the first human rights treaties adopted by the UN related to trafficking and prostitution, the political rights of women, the nationality of married women, and consent to marriage, minimum age for marriage, and registration of marriages. A major milestone was the adoption in 1966 of the two international covenants- International Covenant on Economic, Social and Cultural Rights (ICESCR) & the International Covenant on Civil and Political Rights (ICCPR) which together transformed the aspirational

[5] *Id*. at 134.
[6] Hashimy, Magoge, and Mokarim, *supra* note 2 at 5.
[7] Sayed Qudrat Hashimy, *THE RECOGNITION AND LEGITIMACY OF THE TALIBAN GOVERNMENT: A CONUNDRUM IN INTERNATIONAL LAW*, 28.
[8] *Id*. at 9.

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rights of the UDHR into binding treaty law. A second milestone was the systematic advancement of women's rights in the Declaration on the Elimination of All Forms of Discrimination against Women (CEDAW). In the 1970's & 1980's the UN adopted other core human rights treaties on racial discrimination, torture, children's rights, & in the 1990's and 2000's rights of migrant workers and persons with disabilities. For all their shortcomings, the expansion of the thirty articles of the UDHR into a considerable body of treaty law, with an impressive amount of interpretative work by nine treaty- monitoring bodies is an undeniable UN accomplishment.[9]

The Commission, consisting of 53 governments elected by ECOSOC to which it reported, was replaced in 2006 by the Human Rights Council, consisting of 47 governments elected by the UNGA, to which it report. Before and following the 2006 reform, there has arisen an array of mechanisms based either on the Charter and applicable to all UN member states or on treaties binding only states that have ratified them and which are administered by the Office of the High Commissioner for Human Rights (OHCHR).[10] It has thus become traditional to distinguish Charter- based procedures and treaty- based procedures.[11]

3.2 PROMOTING AND PROTECTING HUMAN RIGHTS THROUGH CHARTER- BASED PROCEDURES

Most of our discussion of the Charter- based procedures relates to the principal UN organs with responsibility over human rights, namely, the UNGA (especially its subsidiary body the UNHRC), ECOSOC, and the Secretariat (principally the OHCHR). However, other units of the UN secretariat have significant human rights responsibilities, such as office for the Co-ordination of Humanitarian Affairs (OCHA), Department of Political Affairs (DPA) and Department of Peacekeeping Operations (DPKO). Moreover, other main organs of the UN occasionally address human rights, such as the International Court of Justice (ICJ) and the Security Council. In addition, there are funds and programs of ECOSOC and the UNGA, which the United Nations Children's Fund (UNICEF), the United Nations Fund for Population Activities (UNFPA), and the United Nations High Commissioner for Refugees (UNHCR) and the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women). Among the 14 Specialized Agencies, which are autonomous organizations

[9] *Id*. at 13.
[10] Hashimy, Magoge, and Mokarim, *supra* note 2 at 6.
[11] This Information is available as of September 2011 in OHCHR, OHCHR Management Plan 2012-2013.

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coordinated by ECOSOC and the UNGA, the International Labour Organization (ILO), the Food and Agriculture Organization (FAO), the United Nations Educational, Scientific and Cultural organization (UNESCO), and the World Health Organization (WHO) contribute in various ways to human rights. OHCHR and six other agencies (UNDP, UNICEF, UNFPA, UNESCO, WHO, AND FAO) adopted in 2003 the "Common understanding among UN Agencies on a Human Rights- Based Approach to Development Cooperation," which defined a number of criteria for a UN standard Human Rights- Based Approach (HRBA).[12]

These agencies will not be further reviewed as I proceed with some background on the OHCHR and the UNHRC, followed by brief discussion of the treaty based approach, procedures that function under the UNHRC.[13]

3.3 PROMOTING AND PROTECTING HUMAN RIGHTS THROUGH TREATY- BASED PROCEDURES

Nine of the UN human rights treaties have functioning monitoring committees, called "treaties bodies," that examine states parties reports on progress made and problems encountered, and formulate their observations on what needs to be done to comply with the obligations of the treaty in question: the 1966 ICESCR & ICCPR, the 1965 International Convention on the Elimination of all forms of Racial Discrimination (ICERD), the 1979 Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the 1984 Convention against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1989 Convention on the Rights of the child (CRC), the 1990 International Convention on the Protection of the Rights of all Migrant Workers & Members of their Families (CMW), the 2006 International Convention on the Rights of persons with Disabilities (CPRD), and the 2006 International Convention for the Protection of all Persons from Enforced Disappearance (CED)[14]. A tenth treaty body, the subcommittee on Prevention of Torture, monitors places of detention under CAT.[15]

[12] UNDP, Report from the Second Inter-Agency Workshop on Implementing a Human Right- Based Approach in the Context of UN Reform, held at Stamford, CT, USA, 5-7 May 2003.
[13] Sayed Qudrat Hashimy, *ANALYSIS OF THE UNITED STATES' LIABILITY FOR WAR CRIME IN AFGHANISTAN*, 3 1–14 (2021).
[14] UN General Assembly Resolution 60/251 of 15 March 2006, para 5(e).
[15] Hashimy, *supra* note 5 at 12.

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4.0 HUMAN RIGHTS COUNCIL

UN Human Rights Council is an intergovernmental body within the UN system made up of 47 States responsible for strengthening the promoting & protection of human rights around the globe. Human Rights Commission was replaced by the Human Rights Council. The establishment of the Human Rights Council is seen as a key component of comprehensive UN reforms. The Council is designed to be an improvement over commission, which perceived human rights abusers were elected as members. The General Assembly resolution creating the Council increased the number of meetings per year & introduced a "universal periodic review" (UPR) process to assess each Member State's fulfilment of its human rights obligations & commitments in a manner which ensures universality of coverage and equal treatment with respect to all States. The review shall be cooperative mechanism based on an interactive dialogue with the full involvement of the country concerned and with consideration given to its capacity-building needs.

Like the Human Rights Commission, the Human Rights Council continues to collaborate with the office of the High Commissioner for Human Rights (OHCHR). It works to maintain & improve the system of special mandates, expert advice & complaint procedures instituted by the HR Commission. Under the General Assembly resolution of 15 March 2006, the Council also

a) Promotes human rights education, advisory services, technical assistance, & capacity building with relevant Member States.
b) Serves as a forum for dialogue on thematic human rights issues and recommends opportunities for the development of international human rights law to the UN General Assembly and
c) Promotes the full implementation of human rights obligations by Member States, and follow up on human rights commitments from other UN conferences & summits.

The Human Rights Council servers as the main UN Forum for intergovernmental cooperation & dialogue on human rights issues. Its focus is to help member States to meet their human rights obligations through dialogue, capacity building and technical assistance. The Council also makes recommendations to the UN General assembly for further development of international law in the field of human rights.

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4.1 UNIVERSAL PERIODIC REVIEW: (UPR)

UPR is a unique process which involves a review of the human rights record of all members of the UN every four years. UPR is a State-driven process, under the auspices of the Human Rights Council which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations. The important feature of UPR is to ensure equal treatment for every country when their human rights situations are assessed. Observer States may attend and speak at the working group, and relevant stakeholders (such as NGOs) may also attend the meetings and present information that is assembled by the OHCHR. The UPR of India was undertaken on 10 June 2008 in the 15th meeting of the Council.[16] According to the UN Secretary General Ban Ki – Moon, UPR "has great potential to promote and protect human rights in the darkest corners of the world". UPR is based on the principles of the UN Charter, the UDHR and other human rights instruments to which the State under review is a party.[17]

Process of UPR:

Under UPR the human rights situation of all UN member States is renewed every 4 to 4.5 years. 42 States are reviewed each year during the working group on the UPR is composed of all 47 Member States of the HR Council chaired by the President of the Human Rights Council. The review takes place in Geneva.

4.1.1 Three key Stages:

The UPR comprises three stages:

- Review of the human rights situation of the States under Review
- Implementation between two reviews (4.5 years) by the States under Review of the recommendations received and voluntary pledges made.
- Reporting at the next review on the implementation of those recommendations and pledges and on the human rights situation in the country since the previous review.

[16] Hashimy, *supra* note 14 at 11.
[17] Report of the Working Group on the Universal periodic Review. United States of America, UN Doc A/HRC/16/11, 4 January 2011.

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4.1.2 Proceedings of the review:

Each review commences with the presentation by the States under review of its National Report and its response to advance questions. Advance questions are submitted by states in writing before 10 days of the review. Following the presentation and interactive dialogue takes place during which states ask questions and make recommendations on human rights situation in the country under review.[18] During this interactive dialogue the State under review takes the floor regularly to answer questions and to comment on recommendations. At the end the State under review concludes.

4.1.3 Human Rights Obligations:

The following human rights obligations are reviewed. Human rights obligations under:

1. The Charter of the UN.
2. The Universal Declaration of Human Rights.
3. Human Rights Treaties ratified by the concerned State (e.g. Covenant on Civil and Political Rights).
4. Voluntary pledges and commitments made by the State.
5. Applicable international humanitarian law (e.g. Four Geneva Conventions 1949).

4.1.4 Outcome of Working Group Review:

This report contains the summary of the interactive dialogue, responses by the State under Review and recommendations along with full list of recommendations made by States. The report is adopted first time during the working group session a few days after the review. This report is then adopted by the Human rights Council in the plenary session by consensus.

4.1.5 Role of non-governmental organisation in UPR:

UPR is a State driven exercise. The NGOs have limited role in it. However, they have many opportunities to take part and influence the UPR process. Their participation can be in the national consultations held by the State under review send information on the human rights situation in the country, lobby members of the working group, take the floor during the

[18] Hashimy, *supra* note 8 at 14.

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adoption of the report by the Human Rights Council and monitor and participate in the implementation by the State under review of the UPR recommendations. NGOs cannot take the floor during the review.[19]

5.0 UN HIGH COMMISSIONER FOR HUMAN RIGHTS

The UN High Commissioner for Human rights is appointed by the Secretary General of the UN with the approval of the General of the UN and holds office for of four years. His office is located at Geneva with a branch office in New York. He has special responsibilities for promoting and protecting human rights. He was required to report annually to the Commission on Human Rights and, through the ECOSOC to the General Assembly. Now the Commission has been replaced by the Human Rights Council in 2006, directly reports to the General Assembly of the UN. The Centre for Human Rights was to implement the policies proposed by the High Commissioner.

The High Commissioner for Human Rights is the principal human rights official of the UN. He heads office of the UN High Commissioner for Human Rights (OHCHR) and spearheads UN human rights efforts. He offers leadership, works objectively, educates and takes action to empower individuals and assists States in upholding human rights. He is part of the UN Secretariat.[20]

5.1 OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS

The Office of the High Commissioner for Human Rights (OHCHR) was established at Geneva with a liaison office in New York.[21] The office of the UN High Commissioner for Human Rights and Centre for Human Rights were merged and now there is single OHCHR since 1997. The OHCHR is headquartered at Geneva with a liaison office in New York and contact centres in various countries. The OHCHR discharges various functions relating to promotion, implementation and international cooperation of human rights. The OHCHR works with governments, national institutions, and civil society, regional and international organisations in order to strengthen the UN rights programme. As a part of the UN, the OHCHR is mandated to promote and protect all rights of the UN Charter, international human rights law and treaties.

[19] Supra at 116.
[20] Hashimy, *supra* note 14 at 16.
[21] Under para 6 of the General Assembly Resolution 48/141 of 20 December 1993.

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This includes prevention of human rights violations, promoting international cooperation to protect human rights and attempting to integrate a human rights approach within all works carried out by the agencies of the UN. The High Commissioner for Human Rights is the principal human rights official of the UN Headquarters at Geneva. He is a part of the UN Secretariat.

5.2 OHCHR HAS FOUR MAJOR DIVISIONS:

1. Research and Right to Development Division - It is responsible for thematic research and policy development.
2. Human Rights Treaties Division – It is responsible for supporting the work of the 10 human rights treaty bodies that are mandated to monitor national- level implementation of international human rights treaties.
3. The field, operation and Technical Cooperation Division – It supports the work of human rights field presences and leads OHCHR engagement with countries on human rights issues.
4. Human Rights Council and Special Procedures Division- It provides substantive and organisational support to the Human Rights Council, its UPR mechanism, special procedure and other subsidiary bodies. It also provides secretarial support to Global Alliance of National Human rights Institutions (GANHRI) including its Sub-Committee on Accreditation and its Bureau.

OHCHR provides a forum for identifying, highlighting & developing responses to today's human rights challenges and acts as a principal focal point human rights research, public information and advocacy within the UN.[22]

5.3 TREATY-BASED BODIES:

Human Rights Committee

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights by its State parties. The United Nations Human Rights Committee is a United Nations body of 18 experts established by a human rights treaty, the International Covenant on Civil and Political Rights

[22] Supra 116.

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(ICCPR). The Committee meets for three four-week sessions per year to consider the periodic reports submitted by the 172 States parties to the ICCPR. All States parties are obliged to submit regular reports to the Committee on how the rights are being implemented. States must report initially one year after acceding to the Covenant and then whenever the Committee requests (usually every four years). The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations". The UN Human Rights Committee should not be confused with the more high-profile UN Human Rights Council, or its predecessor, the UN Commission on Human Rights. Whereas the Human Rights Council (since June 2006) and the Commission on Human Rights are UN political bodies: composed of states, established by a UN General Assembly resolution and the UN Charter, and discussing the entire range of human rights concerns; the Human Rights Committee is a UN expert body: composed of persons, established by the ICCPR. Under article 41 of the Committee to hear inter-state complaints. Both the complainant and the object state must have made such declarations. The Committee will seek to resolve the issue & if it is not successful, it may under article 42 appoint, with consent of the parties, an adhoc Conciliation Commission.

The powers of the Human Rights Committee were extended by Optional Protocol I to the Civil and Political Rights Covenant with regard to ratifying states to include the competence to receive and consider individual communications alleging violations of the Covenant by a state party to the Protocol.[23] The individual must have exhausted all available domestic remedies and the same matter must not be in the process of examination under another international procedure. The procedure under the Optional Protocol is divided into several stages. The gathering of basic information is done by the Secretary General and laid before the working Group on Communications of the Committee, which recommends whether, for example, further information is required from the applicant or the relevant state party and whether the communication should be declared inadmissible. The procedure before the Committee itself is divided into an admissibility and a merits stage. Interim decisions may be made by the Committee and ultimately a 'final view' communicated to the parties.

[23] Signed in 1966 and in force as from 23 March 1976. H. Steiner, 'Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee in Alston and Crawford, Future, p. 15.

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The Committee has dealt with the death penalty issues in several cases has noted, for example, that such a sentence may only be imposed in accordance with due process rights.

Article 6 of the ICCPR provides that death sentences may only be imposed for the most serious of crimes. It provides for non-retroactivity of penalties and that any death sentence must be subject to the guarantees of the Covenant, including the fair trial provisions of Article 14. This penalty can only be carried out pursuant to a final judgement rendered by a competent court. The inclusion of Article 14 standards under Article 6 is important because, while the former is derogable in time of public emergency, the latter is not. Thus, at least for death penalty cases, the full protection of Article 14 is applicable in all circumstances.[24]

The Committee has also held that the Covenant's obligations cover the decisions of diplomatic authorities of a state party regarding citizens living abroad. In the Robinson case[25], the Committee considered Whether a state was under an obligation itself to make a provision for effective representation by counsel appointed by the author of the communication declines to appear. The Committee emphasised that it was axiomatic that legal assistance be available in capital cases & decided that the absence of counsel constituted unfair trial.

Vienna Declaration and Programme of Action, 1993

On 25 June 1993, representatives of 171 States adopted by consensus the Vienna Declaration & Programme of Action of World Conference on Human Rights. The Conference was attended by government delegates and international human rights community including more than 800 NGOs. The final Declaration agreed to in Vienna, which was endorsed by the UN General Assembly[26], reaffirms the principles evolved during the past 45 years & further strengthens the basis in the area of human rights. The Declaration recognises interdependence between democracy, development and human rights. It also took decision to promote and protect the rights of women, children and indigenous peoples by creating new mechanism. It also called for establishment of a High Commissioner for Human Rights by the General Assembly. The Assembly did it on 20 December 1993.

[24] Thompson v. St. Vincent and the Grenadines, A/5/40, vol. II, annex X, sect.H, para. 8.2.
[25] A/44/40, p. 241 (1989)
[26] United Nations General Assembly Res. 48/121 of 1993.

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5.4 COMMITTEE ON ELIMINATION OF RACIAL DISCRIMINATION (CERD)

The Committee on the Elimination of Racial Discrimination (CERD) oversees implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) through its consideration of State reports, individual complaints, inter-State complaints, and early-warning and urgent procedures, as well as its preparation of general comments (referred to as "general recommendations" by the Committee) and thematic discussions.

5.4.1 Inter-State Complaints

Articles 11 through 13 of the ICERD provide a mechanism for States to complain about violations of the ICERD made by another State through the establishment of an ad hoc Conciliation Commission. Article 22 of the ICERD also provides a mechanism for States to resolve inter-State disputes concerning the interpretation of application of the Convention. This procedure allows for disputes to be resolved in the first instance by negotiation, and should that fail, by arbitration. If the parties then fail to agree to the arbitration within a period of six months, then one of the States may refer the dispute to the International Court of Justice unless a State opted out of the procedure by making a declaration at the time of ratification or accession to ICERD.

5.4.2 Racism and Xenophobia:

Since 9/11, attack on US trade towers this has become particularized in the form of Islamophobia, coupled with an ideological anti-Semitism propagated by neo-Nazi parties. Since 1984, the political expression of this social disease has been the growth of neo-fascist and far-right parties; the two have fed off each other. Yet, to a degree, it has been held in check by the "historic memory" of the horrors of Hitler's Germany. However, this has begun to change, as recent events have triggered the perception that Christendom is at war with the Dar al Islam, allowing far-right parties to claim a popular resonance and repackage themselves in a way that jettisons much of their historical baggage. In June 2004, 732 Members of the European Parliament (MEPs) were elected by 350 million voters in what was one of the world's largest-ever elections. In these elections, 25 MEPs from ten neo-Nazi and extreme right-wing parties across seven member St They were joined by dozens more MEPs who share the rhetoric if not the underpinning ideology. This threatens to further intensify the discrimination against the 12

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million to 14 million third-country nationals and the 4 million black Europeans living in the European Union (EU) who already face the threat of physical violence, daily discrimination and verbal harassment-a second-class status with third-class treatment, including three of the recent accession States, were elected to the European Parliament. EU has been trying to counter such xenophobia and racism. It embraces the principles of dignity, freedom, equality, solidarity, citizen's rights and justice. [27]

5.5 COMMITTEE ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Through women constitute half the population, their enjoyment of rights on an equal footing with men leaves a lot to be desired. The status of women in society in general and in particular, their political, economic and social status is far from satisfactory. The discrimination often starts right from womb and manifests in many ways. Their access to nutrition, education, health care, employment are serious rights issues.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW), an expert body established in 1982, is composed of 23 experts on women's issues from around the world. The Committee's mandate is very specific: it watches over the progress for women made in those countries that are the States parties to the 1979 Convention on the Elimination of All Forms of Discrimination against Women. A country becomes a State party by ratifying or acceding to the Convention and thereby accepting a legal obligation to counteract discrimination against women. The Committee monitors the implementation of national measures to fulfil this obligation.

At each of its sessions, the Committee reviews national reports submitted by the States parties within one year of ratification or accession, and thereafter every four years. These reports, which cover national action taken to improve the situation of women, are presented to the Committee by Government representatives. In discussions with these officials, the CEDAW experts comment on the report and obtain additional information. This procedure of actual dialogue, developed by the Committee, has proven valuable because it allows for an exchange of views and a clearer analysis of anti-discrimination policies in the various countries.

[27] Based on the Article of GLYN FORD, "*Racism and Xenophobia in Europe Stemming the Rising Tide",* UN Chronicle, No. 4 (2004) 32-33.

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The Committee also makes recommendations on any issue affecting women to which it believes the States parties should devote more attention. For example, at the 1989 session, the Committee discussed the high incidence of violence against women, requesting information on this problem from all countries. In 1992, the Committee adopted general recommendation 19, which requires national reports to the Committee to include statistical data on the incidence of violence against women, information on the provision of services for victims, and legislative and other measures taken to protect women against violence in their everyday lives, such as harassment at the workplace, abuse in the family and sexual violence. As of the end of 2007, the Committee has issued 25 general recommendations.

The 23 members of CEDAW, acknowledged as experts "of high moral standing and competence in the field covered by the Convention", are elected by the States parties. These elections have to meet the Convention's demands for equitable geographical distribution in membership and the requirement that CEDAW members represent "different forms of civilization as well as principal legal systems". Their terms last four years, with only half of the Committee members replaced each time elections take place. The meeting of States parties is convened every other year by the Secretary-General at UN Headquarters in New York.

The Universal Declaration of Human Rights 1948 (UDHR) recognises the equal rights of men and women.[28] The UDHR declares that everyone is entitled to all the rights and freedom set forth in this declaration, without distinction of sex. Discrimination in the enjoyment of civil, political, economic, social and cultural rights on the basis of sex has been prohibited under the International Covenant on Civil and Political Rights and International Covenant on Economic, Social & Cultural Rights respectively.

A number of declarations and conventions on various facets of women's rights were adopted under the aegis of the United Nation. They include the Convention on the Political Rights of Women, 1952, Declaration on the Elimination of Discrimination against Women 1967, and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict 1974.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 and entered into force in 1981. It is the most comprehensive treaty on women's human rights, establishing legally binding obligations to end discrimination. It states

[28] Universal Declaration of Human Rights 1948, preamble Art 1 and 2.

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that full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields. It provides for equality between women and men in the enjoyment of civil, political, economic, social and cultural rights. In addition to addressing the major issues, the convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to participation in public life, marriage, family life, and sexual exploitation.

State parties are required to end all forms of discrimination against women and to ensure their equality with men in political & public life with regard to nationality, education, employment, health, & economic and social benefits. States are required to take account of the unique problems of women in rural areas, and their special roles in the economic survival of the family. The Convention is the only human rights treaty to affirm the reproductive rights of women.

5.6 GENERAL RECOMMENDATIONS MADE BY COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN:

As of January 2004, Committee on the Elimination of Discrimination against Women had adopted 25 general recommendations. Those adopted during the committee's first ten years were short & modest, addressing such issues as the content of reports, reservations to the convention & resources. The committee clarified the state parties obligations, among others, on issues such as violence against women, equal remuneration for work of equal value, women & AIDS, measurement & quantification of the unremunerated domestic activities of women and their recognition in the GNP, disabled women, equality in marriage and family relations and women and health.

In *Gaurav Jain v Union of India*[29], case regarding women in prostitution, the Supreme Court reiterated the principles of CEDAW, and has acknowledged that human rights for women including girl child are inalienable, integral and indivisible part of universal human rights.

In *Municipal Corporation of Delhi v Female Workers*[30] [Muster Roll] case, the Supreme Court of India dealing with the daily wage women employees right to claim maternity benefit has

[29] Gaurav Jain v Union of India AIR 1997 SC 3021.
[30] Municipal Corporation of Delhi v Female Workers AIR 2000 SC 1274.

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recognised the child bearing role of women as a social function as stipulated in art 5 (b) of CEDAW.

In C Masilamani Mudliar's case, the Supreme Court, dealing with the property rights for women, has held that the personal laws. Derived from scriptures, conferring inferior status on women is anathema to equality, and upheld the right of tribal women to inherit properties. The court has called upon the state to eliminate to eliminate obstacles, prohibit all gender-based discrimination as mandated by arts. 14 & 15 of the Constitution of India. Pursuant to art. 2(f) and other related articles of CEDAW. The state should take all appropriate measures, including legislation to modify or abolish gender based discrimination in existing laws, regulations, customs and practices which constitute discrimination against women.[31]

In a patriarchal society, father is regarded as guardian of the minor. Most personal laws have a similar provision. In Hariharan's case, the Supreme Court held that non- recognition of mother as a guardian is discriminatory and by applying the principles of the convention, it has recognised the mother to be guardian of the minor child.[32]

Shayara Bano v. Union of India are significant rulings of the Supreme Court in furthering human rights of women in India. In Shayara Bano, the Constitutionality of talaq-e-biddat or triple talaq was impugned. Triple talaq is instant & irrevocable & is pronounced by the husband three times in one sentence. The court by 3:2 majority set aside this practice. Justice Rohinton Fali Nariman described this practice manifestly arbitrary & violated of Article 14 of the Constitution of India. Even minority judgment of Chief Justice of India with concurrence of Justice S. Abdul Nazeer directed the Union of India to consider appropriate legislation particularly with reference to talaq-e-biddat. At the time of writing, the government intends to introduce a Bill The Muslim Women (Protection of Rights on Marriage) Bill, 2017. It proposes imprisonment of three years for a Muslim husband who resorts to talaq-e-biddat.

5.7 DISCRIMINATION AGAINST WOMEN MEANS:

Any distinction, exclusion, or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women,

[31] C Masilamani Mudliar v Idol of Sri Swaminatha Swamintha Swami Thirukoil AIR 1996 SC 1697.
[32] India's second & third periodic reports to CEDAW. Gita Hariharan v Reserve Bank of India AIR 1999 SC 1149.

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irrespective of their marital status, on basis of equality of men & women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil and in any other field.

According to World Health organisation Report of Nov 2017, about 35% of women world-wide have experienced either physical &/or sexual intimate partner violence or non-partner sexual violence in their lifetime.[33] Abuse & harassment on social media are also having alarming impact on women in the form of stress, anxiety or panic as a result of online harmful experiences.[34]

In most of the European countries, violence against women is alarming. The report has quoted statistics showing that in France, six women die each month at hands of professed lovers. Gang rapes, known as "tournantes" or "pass-rounds" in which teenage girls or young women are handed over by their boyfriends to their buddies, is the worst form of violence. The situation in other parts of the world is also gloomy. In some Islamic counties like Iraq, Pakistan, Afghanistan, "honour Killing" of women is socially approved. Legal ban on sati system in India has not totally abolished this social evil. It is hoped that general awareness among women may abate this menace against them.

5.8 COMMITTEE ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child 1989 (CRC) is the Principal children's treaty encompassing a full range of civil, political, economic social and cultural rights. The Convention aims at protecting children from discrimination, neglect and abuse. It grants and provides for the implementation of rights for children both in times of peace and during armed conflict.[35]

The Convention embodies four general principles for guiding implementation of the rights of the child: (1) non-discrimination ensuring equality of opportunity. When the authorities of a state- take decisions which affect children they must give prime consideration to the best interests of the child. (2) The right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development. (3) Children should be free to express their opinions and (4) such views should be given due weight taking the age and

[33] http://www.who.int/en/news-room/fact-sheets/detail/violence-against-women.
[34] Amnesty International Website.
[35] HUMAN RIGHTS: A BASIC HANDBOOK FOR UNITED NATIONS STAFF, UNITED NATIONS. [ed.4th 1995, at 380].

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maturity of the child into consideration. Among other provisions of the convention, sate parties agree that children's rights include: free & compulsory primary education, protection from economic exploitation, sexual and protection from physical and mental harm and neglect, the right of the disabled child to special treatment & education, protection of children affected by armed conflict, child prostitution & child pornography. Under the convention the committee on the rights of the child was established to monitor the implementation of the convention by state parties.

The Convention on the Rights of the Child 1989 requires that no child will be subjected to torture or other cruel, inhuman or degrading treatment or punishment and that every child deprived of liberty will be treated with humanity and respect for the inherent dignity of the human person.

The Government of India has ratified the United Nations Convention on the suppression of the Traffic in persons and the Exploitation of the Prostitution of Others 1949 on 25 July 1991. The International Labour Organisation (ILO) focused on the Worst Forms of Child Labour 1999 on ending slavery, debt bondage, forced recruitment of children in armed conflict, prostitution, drug trafficking and any work harmful to the health, safety and morals of children. India is yet to become party to this convention.

The Optional protocol to the Convention on the Rights of the Child on the Involvement of children in Armed Conflict 2000 seeks to put limits on the use of children in armed conflict & seeks thus:

1. It prohibits the recruitment of individuals under 18 years of age by non-state actors.
2. It imposes an obligation upon states to raise the minimum age of recruitment above the age set by the Convention on the Rights of the child.
3. It establishes an obligation upon states to take all feasible measures to prevent the direct participation in hostilities by individuals under the age of 18.
4. It requires states to establishes safeguards relative to the voluntary recruitment of individuals under the age of 18.
5. It sets forth an obligation upon states to report to the committee on the Rights of the

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Child on its implementation.[36]

The committee on the Rights of the Child is a body of independent experts that monitors and reports on the implementation of the UN Convention on the Rights of the Child by governments that ratify the Convention. On the involvement of children in armed conflict and on sale of children, child prostitution, and child pornography. On 19 December 2011, the UN General Assembly approved a third Optional Protocol on Communications Procedure, which allows individual children to submit complaints regarding specific violations of their rights under the Convention and its first two Optional Protocols. Third Protocol entered into force on 14 April 2014.

The Committee on the Rights of the Child consists of 10 experts of high moral standing & recognised competence in the field covered by the Convention. The members are elected by the States Parties from among their nationals by secret ballot from the list of persons nominated by them. Each State may nominate one person from among its own nationals. The members act in their individual capacity. The election is held at meetings of States Parties convened by the Secretary General of the UN. A two- thirds of the States Parties constitute the quorum for such meeting. The persons getting the largest number of votes and an absolute majority of the States present and voting are declared elected. The term of the members of the committee is four years. The committee normally meets at the headquarters of the UN or at any other convenient place, annually determined by the committee.

The States Parties undertake to submit to the CRC, through the Secretary General of the UN, reports on the measures adopted by them to give effect to rights given by the Convention to the child. The report is also to indicate the difficulties affecting the realisation of the provisions of the treaty. The committee (CRC) submits, in every two years, a report on its activities to the General Assembly through the Economic & Social Council (ECOSOC).

The committee may invite the specialised agencies, UNICEF & other competent bodies to provide expert advice on implementation of the Convention relating to their arrears. The Committee may also recommend to the General Assembly to request the Secretary General to undertake on its behalf, studies on specific issues relating to the rights of the Child.

[36] The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2000.

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The United Nations Children's Emergency Fund (UNICEF) is a subsidiary body set up by the General Assembly in 1946. It renders valuable assistance to the developing countries to the cause of child welfare.

The General Assembly in 1986 adopted a Declaration of Social & Legal Principles Relating to the Protection & Welfare of children with special reference to Foster Placement and nationality & internationally.

6.0 CONCLUSION:

Human rights are those minimal rights that every individual must have under his being a member of the human family' irrespective of any other consideration. They are based on mankind's demand for a life in which the inherent dignity of the human being will receive respect and protection. They are forming the foundations of society and they are inviolable, as the society would disintegrate if they are violated. There is growing rhetoric in the recent past as to the promotion and protection of human rights around the world. This is because of the flagrant and blatant violations of human rights by the people in government and non-government sectors. The promotion and protection of human rights need a conducive and enabling environment, in particular to appropriate regulations, institutions and procedures framing the actions of the State.

Human rights are considered as the greatest idea of this generation and a milestone in the development of the rights of man. Innumerable declarations, covenants and legislations have been initiated and entered into the national and international levels for the protection and promotion of human rights. Human Rights are sometimes called fundamental rights or basic rights or natural rights. The legal duty to protect human rights includes the legal duty to respect them. Members of the UN have committed themselves to promote respect for and observance of human rights and fundamental freedoms.

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